

bases for and effects of the proposed action outweighs the demonstrated concern for protection of a competitive position and (ii) whether the information should be withheld from public disclosure pursuant to this paragraph. If the record or document for which withholding is sought is deemed by the Commission to be irrelevant or unnecessary to the performance of its functions, it shall be returned to the applicant.

(6) Withholding from public inspection shall not affect the right, if any, of persons properly and directly concerned to inspect the document. The Commission may require information claimed to be a trade secret or privileged or confidential commercial or financial information to be subject to inspection: (i) Under a protective agreement, by contractor personnel or government officials other than NRC officials; (ii) by the presiding officer in a proceeding; and (iii) under protective order, by parties to a proceeding, pending a decision of the Commission on the matter of whether the information should be made publicly available or when a decision has been made that the information should be withheld from public disclosure. In camera sessions of hearings may be held when the information sought to be withheld is produced or offered in evidence. If the Commission subsequently determines that the information should be disclosed, the information and the transcript of such in camera session will be made publicly available.

(c) If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be placed in the Public Document Room. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be placed in the Public Document Room and will be returned to the applicant: Provided, That information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission

and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

(d) The following information shall be deemed to be commercial or financial information within the meaning of § 9.17(a)(4) of this chapter and shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

(1) Correspondence and reports to or from the NRC which contain information or records concerning a licensee's or applicant's physical protection or material control and accounting program for special nuclear material not otherwise designated as Safeguards Information or classified as National Security Information or Restricted Data.

(2) Information submitted in confidence to the Commission by a foreign source.

(e) The presiding officer, if any, or the Commission may, with reference to the NRC records and documents made available pursuant to this section, issue orders consistent with the provisions of this section and § 2.740(c).

[41 FR 11810, Mar. 22, 1976, as amended at 42 FR 12877, Mar. 7, 1977; 52 FR 49355, Dec. 31, 1987; 53 FR 17688, May 18, 1988]

## Subpart H—Rulemaking

### § 2.800 Scope of rulemaking.

This subpart governs the issuance, amendment and repeal of regulations in which participation by interested persons is prescribed under section 553 of title 5 of the U.S. Code.

[35 FR 11459, July 17, 1970]

### § 2.801 Initiation of rulemaking.

Rulemaking may be initiated by the Commission at its own instance, on the recommendation of another agency of the United States, or on the petition of any other interested person.

### § 2.802 Petition for rulemaking.

(a) Any interested person may petition the Commission to issue, amend or